



CITY COUNCIL AGENDA ITEM

Date: January 10, 2013

To: Brian Kischnick, City Manager

From: William Nelson, Fire Chief
David Roberts, Assistant Fire Chief/Fire Marshal

Subject: Delegation of Fireworks Inspections

The Michigan Bureau of Fire Services (BFS) is seeking departments that are interested in applying for inspection delegation for consumer fireworks sales facilities (CFRS) under Section 19 of 2011PA 256. This delegation would be effective for one year. The local fire department would be responsible for conducting inspections of the permanent and temporary CFRS locations within its jurisdiction. The certification, plan review, and citation functions will remain the responsibility of the BFS. Fire departments that elect to have delegation authorization will receive 80% of the application fee paid for the consumer fireworks certificate (\$800 for permanent facilities and \$480 for temporary facilities).

Legal Considerations

To qualify for inspection delegation, the local fire department must enter into a written agreement with the Bureau. All inspections shall be conducted by a certified fire inspector using the promulgated Fireworks Fire Safety Rules and documented on Bureau-approved forms. In addition, the local fire department shall send its personnel to a training session in Lansing scheduled for sometime during the week of February 4, 2013. The Troy Fire Department currently has three certified inspectors.

Recommendation

The Fire Department believes such delegation of authority for the inspection of CFRS facilities is in the best interest of the City and therefore recommends a signed resolution for this delegation authority.

Enclosed for Council's review is the delegation authority authorization form and associated agreement with the BFS.

City Attorney's Review as to Form and Legality

Lori Grigg Bluhm, City Attorney

DELEGATION AGREEMENT

Between

The Michigan Department of Licensing & Regulatory Affairs
Bureau of Fire Services

And

CITY OF TROY

EXPIRATION

1/14/2014

I. Purpose

This agreement is entered into for the purpose of delegation of Fireworks Inspections in accordance with Michigan Fireworks Safety Act, PA 256 of 2011 as amended (MCL 28.469).

II. Local Agency Responsibilities

The City of Troy Fire Department (Agency) agrees:

- A. To abide by all terms of this agreement including all attachments (i.e. procedures).
- B. To the use of State Certified Inspectors to perform all delegated inspections.
- C. To complete all delegated inspections within the time frames as specified by the Department of Licensing & Regulatory Affairs and Bureau of Fire Services.
- D. To complete all delegated inspections using the appropriate rules promulgated in accordance with MCL 28.470.
- E. To utilize all report forms and reporting formats required by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, for all consumer fireworks retail sales delegated inspections.
- F. To follow and apply all Department of Licensing & Regulatory Affairs, Bureau of Fire Services, procedures regarding the inspection of Consumer Fireworks Retail Sales facilities.

G. To the proper conduct and demeanor of their employee(s) while performing delegated inspections in accordance with this agreement.

H. To attend training opportunities provided by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, necessary for the proper completion of delegated inspections.

III. Department of Licensing & Regulatory Affairs, Bureau of Fire Services (Department) Responsibilities

The Department of Licensing & Regulatory Affairs, Bureau of Fire Services agrees:

A. To abide by the terms of this agreement including all attachments.

B. To provide the technical assistance and supervision necessary for the proper administration of this agreement.

C. To provide any report forms and reporting formats required by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, for the reporting of inspections performed in accordance with this agreement.

D. To provide the Agency with copies of Department of Licensing & Regulatory Affairs, Bureau of Fire Services procedures. Manuals or other documents necessary for the implementation of this agreement shall be the responsibility of said Agency.

E. To provide the opportunity for training for an appropriate number of employees of the Agency, as determined by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, regarding rules, laws, or procedures necessary for the completion of inspections delegated in accordance with this Agreement.

F. To review the delegation of authority to perform inspections each year in accordance with MCL 28.455.

G. To notify the Agency, in writing, of the intent to revoke delegated authority if the Department of Licensing & Regulatory Affairs, Bureau of Fire Services finds that the terms of the Agreement have not been kept, or if the Department intends to withdraw from the delegation program.

H. To revoke the authority of the employee(s) to perform delegated inspections upon notification to the Agency that the request for delegation has been rescinded.

- I. To inform the State Fire Safety Board of all decisions by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, in delegating or revoking the authority delegated under MCL 28.469.

IV. Conflict of Interest

The Agency and the Department of Licensing & Regulatory Affairs, Bureau of Fire Services are subject to the provisions of Act No. 317, PA of 1968, as amended, being MCLA 15.321 et seq, and Act No. 196, PA of 1973, as amended, being MCLA 15.341 et seq.

V. Liability

- A. All liability and/or loss or damage as a result of claims, demands, costs, or judgments arising out of activities that are the responsibility of the Agency or unit of government pursuant to the terms of this Agreement shall be the responsibility of the governing body if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the unit of government or its employees either directly or indirectly, provided that nothing herein shall be construed as a waiver of an governmental immunity available to the Agency, government body or unit of government or its employees by common law, statute, or court decision.
- B. All liability to third parties, and/or loss, or damage as a result of claims, demands, costs, or judgments arising out of activities that are the responsibility of the Department pursuant to the terms of this Agreement shall be the responsibility of the Department if the liability, loss, or damage is caused by, or arises out of the action or failure to act on the part of the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, or its employees, provided that nothing herein shall be construed as a waiver of any governmental immunity available to the State, its agencies, the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, or the employees of any of them as provided by common law, statute, or court decision.
- C. In the event that liability to third parties, and/or loss, or damages arises as a result of activities which go beyond the mere fact of agreement between the Agency and the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, in fulfillment of their responsibilities under this agreement, such a liability, loss or damage shall be borne in relation to each party's responsibilities under that joint activity, provided that nothing herein shall be construed as a waiver of any governmental immunity available to the governing body, unit of government, the State and the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, or the employees of any of them, as provided by common law, statute , or court decision.

VI. Statutory Authority

Authority to perform Consumer Firework Retail Sales inspections is delegated to the certified fire inspector(s) of the Agency by the Department of Licensing & Regulatory Affairs, Bureau of Fire Services, under provision of Michigan Fireworks Safety Act, PA 256 of 2011 as amended, MCL 28.469.

City of Troy Fire Chief

Date

Director, Bureau of Fire Services

Date